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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Implementation of the Pay Telephone	)	
Reclassification and Compensation	)	CC Docket No. 96-128
Provisions of the Telecommunications	)	
Act of 1996	)	

REPLY COMMENTS OF
RCN TELECOM SERVICES, INC.

RCN Telecom Services, Inc. ("RCN"), through undersigned counsel and pursuant to the Public Notice released by the Federal Communications Commission ("Commission") on October 20, 1997, hereby submits its Reply Comments in the above-captioned proceeding. While RCN devoted most of the discussion in its initial Comments to the harmful and inequitable consequences that the granting of a waiver of the payphone coding digits would have on interexchange carriers ("IXCs"), these brief Reply Comments address the supposed harm that the local exchange carriers ("LECs") claim they will suffer if a waiver is not granted.

All of the LECs and their industry representatives contend that a waiver is warranted because of the immense difficulties they will encounter in implementing Flex ANI or other coding digit mechanisms. For example, Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell point to the number of lines they must translate in order to provide coding digits.[1] Similarly, the RBOC/GTE/SNET Payphone Coalition contends that a waiver "is necessary to upgrade switches serving the minority of phones that currently do not pass such digits."[2] The National Exchange

[1] Comments of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, at 2.

[2] Comments of RBOC/GTE/SNET Coalition, at 2.

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Carrier Association ("NECA") argues further, "The issues are technically complex and the potential impact on the industry, in terms of cost and network modifications, is extensive."[3]

What these LECs and their industry representatives do not say is perhaps more revealing than what they do say in their Comments. While it may be true that implementing an appropriate payphone coding digit mechanism will be complex, conspicuously absent from the LECs' Comments is any mention of efforts they have made thus far to comply with the clear mandate that the Commission set forth in the previous orders in this docket.[4] The LECs' Comments merely speak of the problems and costs they will encounter going forward, rather than speaking to any problems they have encountered to date. To speak of future difficulty in implementing a requirement that has been in effect for over a year ignores the fundamental question of whether the LECs have even begun to comply with the Commission's directive. In fact, a statement by TDS Telecommunications Corporation in its Petition provides further reason to question the timeliness of the LECs' action: "TDS has only recently been able to evaluate and determine the most suitable method for its subsidiaries to use in transmitting the required digits with payphone ANI."[5] The Commission should not countenance such flagrant disregard for its Rules over the past year by sanctioning such disregard for an additional period of time.

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[3] Comments of NECA, at 1.

[4] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541, 20591 (1996), at ¶¶98-99; Order on Reconsideration, 11 FCC Rcd 21233, 21265-66 (1996), at ¶64. RCN concurs with the analysis provided by Sprint, who noted in its initial Comments that the LECs failed to seek any further reconsideration or judicial review of the payphone coding digit requirements following the Order on Reconsideration. Comments of Sprint, at 2.

[5] Petition of TDS Communications Corporation, at 2.

Indeed, RCN questions whether the Commission's mandate will in fact prove that costly to the LECs over the long run. While NECA may claim that "the potential impact on the [LEC] industry, in terms of cost and network modifications, is extensive," this assessment ignores more than half of the equation. The long-term benefits that LECs will receive by obtaining per-call compensation at the Commission's prescribed 28.4¢ rate almost certainly outweigh any short-term expenditures the LECs will make in upgrading their switches. The payphone industry and the investment community are applauding the Commission's decision to establish the 28.4¢ per-call compensation rate as a boon to the payphone service market. As an analyst recently commented in the *Wall Street Journal*, the Commission's new per-call compensation rate will help all payphone providers, most of whom are the LECs, "get to the level of profitability that they haven't seen in decades."[6]

Moreover, it is unclear whether the LECs themselves have only contributed to making the cost of network upgrades greater by waiting until the last minute to comply with the Commission's clear year-old mandate to provide coding digits for per-call compensation. Finally, as RCN noted in its initial Comments, even the LECs' estimate of the costliness of compliance has decreased significantly over the past few weeks.[7] Given their enhanced opportunity to obtain substantially increased profits from per-call compensation, given the possibility that their own delay contributed to the need for expedited action in implementing coding digit mechanisms, and given that their cost

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[6] "FCC Revises Rates Companies Must Pay on Access-Code Calls," *Wall Street Journal*, Oct. 10, 1997, at A4.

[7] *See* Letter to John B. Muleta, Deputy Chief, Common Carrier Bureau, from Keith Townsend, Director Regulatory Affairs and Counsel, USTA, Oct. 24, 1997.

estimates have proven unreliable in the past, the LECs should not be granted a waiver on the grounds that implementation of these coding digit mechanisms will increase their costs in the short-term.

RCN acknowledges the concern raised by the American Public Communications Council ("APCC") that non-LEC payphone service providers ("PSPs") may go without compensation as a result of the LEC intransigence in complying with the Commission's payphone coding digit mandate.[8] As a result, RCN agrees in principle that compensation for PSPs whose payphones are in non-equal access areas and cannot transmit the necessary coding digits should continue under the flat-rate per-phone compensation mechanism required by the Commission during the transition year before per-call tracking capabilities were in place.[9] However, RCN disagrees with APCC's effort to include collateral conditions, such as an assumption of 152 calls per payphone per month, in the implementation of this flat-rate compensation mechanism.[10] The structure of the flat-rate compensation mechanism has already been litigated through three Commission orders and before the U.S. Court of Appeals for the District of Columbia. The APCC's proposal would simply reopen the debate over this compensation structure before the Commission has had a chance to make its decision upon remand.[11] Thus, rather than establishing a different flat-rate compensation mechanism

[8] *See* Comments of APCC, at 9.

[9] Other commenters have expressed support for the use of some kind of a per-phone, flat-rate compensation mechanism in this context. *See, e.g.,* Comments of Sprint, at 3; Comments of MCI, at 4; Comments of Frontier, at 5.

[10] Comments of APCC, at 24.

[11] *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Second Report and Order, FCC 97-371 (rel. Oct. 9, 1997), at ¶ 4. ("Other requirements remanded in *Illinois Public Telecomm.*, including the compensation obligations applicable during the period from November 1996, through October 6, 1997, will be addressed in a subsequent order in this proceeding.")

in the context of this waiver consideration, the Commission should simply adopt a consistent flat-rate, per-phone mechanism that will apply both for compensation of PSPs from November 1996 to October 1997, and for compensation of those PSPs whose payphones cannot provide the appropriate coding digits for per-call compensation because of the LEC delay.

For the foregoing reasons, RCN requests that the Commission deny the requests by the LECs for a waiver of the coding digit requirement, and act in accordance with the recommendations set forth above.

Respectfully submitted,

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Dated: November 6, 1997

CERTIFICATE OF SERVICE

I, Jolanda Tedford, hereby certify that a copy of the foregoing **Reply Comments of RCN Telecom Services, Inc. CC Docket No. 96-128** was sent to each of the following parties by hand delivery (denoted with asterisk) and regular mail on this 6th, day of November, 1997.

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